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United States Department of the Interior
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Mountain-Prairie Region

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DEC 31 2012

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JAN 04 2013

Mr. Bill Schultz, Administrator
Melissa Hornbein, Attorney
Montana Reserved Water Rights Compact Commission
P.O. Box 201601
1625 Eleventh Avenue
Helena, Montana 59620-1601

Dear Bill and Melissa,

The FWS response needs to begin with a quick review of where we have been. Our initial proposal provided a standard basin closure approach that we believed was necessary to maintain minimum instream flows for maintenance of riparian habitat on the CMR. We proposed to subordinate the CMR reserved right to all rights and permits existing as of the day of Compact approval. Thus, all existing water users for at least the last 77 years would not be adversely affected by the inclusion of the reserved right in the final decrees by the Water Court. Our initial map caused concern over the breadth of the closures, but that was quickly remedied once we understood that closures could be for sub-basins. Our proposal also took into consideration the lateness of the date for initiating public negotiations, and thus we did not ask for collateral rights that are in other compacts.

Through the public negotiations sessions, the FWS watched as the public made demand upon demand, and condition upon condition. To say the least, we are frustrated with the lack of recognition for the scientists and engineers of the FWS and the State of Montana, who have worked long hours and made several recommendations in these negotiations. The FWS appreciates and respects the Commission's desire and ability to take the pulse of the legislature and the public. Thus, we agreed to consider a Commission counter proposal that essentially would provide the same minimal flows as in our proposal, but would require the FWS to monitor water development over several million acres to assure that the reserved rights are not adversely affected.

In the normal course of negotiations, a give and take usually results in a compromise that is acceptable to the parties. The FWS is at a point where it cannot in good faith negotiate to give more without some reciprocal provisions from the Commission. The FWS has

obtained approval to accept the counter proposal, pending approval by the Solicitor's Office and the Department of Justice, but the professionals and leaders within the FWS do not believe that the reserved rights at the CMR should be further limited.

Since the presentation of the counter proposal, we have continued to negotiate and have agreed to modifications and clarifications to that document. The FWS has agreed that the Mussellshell instream flow will be enforced for the same period of use as the other quantified streams. Additionally, we have reviewed four streams and agreed that certain portions of reaches do not need to be subject to impoundment limitations. The FWS understands that discomfort of an unquantified right, and we have recommended replacement language to assure our participation in future water actions that affect the CMR.

As the FWS reviewed the administration of the instream flows on the Mussellshell, we realized the distance between the measurement point near Mosby and the CMR boundary. We recommend and request that language be added to the compact that would allow for a measuring point downstream, much like the "Arrow Creek" provision in the BLM Breaks compact.

Again, we compliment the Commission on its efforts during the CMR negotiations. The FWS looks forward to completing a compact with Montana, and believes that the above explanations and modifications can result in such an agreement.

I hope this meets your needs. Call me if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Megan Ester', with a large, stylized loop at the end.

Megan Ester
Chief, Division of Water Resources